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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.M., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B295124
(Super. Ct. No. 18JV00026)
(Santa Barbara County)

DEPARTMENT OF SOCIAL
SERVICES, COUNTY OF
SANTA BARBARA,

Plaintiff and Respondent,

v.

C.G. et al.,

Defendants and Appellants.

C.G. (mother) and J.M. (father) appeal the juvenile court's order terminating parental rights to their son, D.M., and selecting adoption as the permanent plan. (Welf. & Inst. Code,

§ 366.26.)¹ Mother claims, and father agrees, the juvenile court abused its discretion in denying mother a contested hearing on whether the beneficial parent-child relationship exception to the termination of parental rights applies (*id.*, subd. (c)(1)(B)(i)). The court determined mother's offer of proof was insufficient to merit a contested hearing. We affirm.

Mother also appeals the juvenile court's order denying her section 388 petition to modify the order bypassing reunification services to her. Having failed to challenge that order in her brief, mother has forfeited this issue on appeal. (See *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 888, fn. 12.)

FACTUAL AND PROCEDURAL BACKGROUND

In May 2008, mother gave birth to a child, J.J.M., who tested positive for amphetamine and opiates and who had severe medical issues. Mother admitted to using methamphetamine and heroin within a week of delivering the child. The Santa Barbara County Department of Social Services/Child Welfare Services (CWS) took the infant into protective custody. Neither mother nor father were offered services and parental rights were terminated in 2009.

In December 2016, mother gave birth to D.M., who was born prematurely and tested positive for methamphetamine and methadone. Mother informed CWS that she intended to give D.M. up for adoption so that she could focus on her sobriety. Mother also said a friend would be taking "guardianship" of the child.

Mother has an extensive criminal history, including armed robbery, second degree robbery, multiple parole violations, possession of narcotics, possession of narcotics for sale, probation

¹ All further statutory references are to the Welfare and Institutions Code.

violations and the infliction of corporal injury on a spouse or cohabitant. Father's history includes child endangerment charges and possession of heroin and methamphetamine for sale.

On January 13, 2018, police officers served a search warrant on the family home and found methamphetamine in father's pockets and additional drugs throughout the house. The officers arrested both parents and notified CWS that one-year-old D.M. was in the home without a caretaker. A friend cared for him for a few days, and then CWS took him into protective custody.

CWS filed a dependency petition alleging failure to protect (§ 300, subd. (b)), no provision for support (*id.*, subd. (g)), and abuse of sibling (*id.*, subd. (j)). The petition set forth the parents' substance abuse history, criminal records and child welfare history, including the termination of parental rights to D.M.'s sibling. The petition also included information regarding mother's untreated mental health issues.

D.M. was detained and placed in a licensed foster home. The juvenile court ordered visitation for both parents upon their release from jail. At a joint jurisdiction and disposition hearing, the court dismissed the section 300, subdivision (g) allegation but found the remainder of the petition to be true. It bypassed reunification services for mother pursuant to section 361.5, subdivision (b)(11), and ordered that services be provided to father.

In its six-month status review report, CWS recommended that D.M. remain in out-of-home care and that father's reunification services be terminated. Following a contested hearing, the juvenile court terminated father's services, finding he had failed to follow through on multiple elements of his case

plan. The court also denied mother's section 388 petition to modify the order bypassing services to her.

Thereafter, CWS recommended that mother's and father's parental rights be terminated and that adoption by his foster parents be established as the permanent plan. At that time, D.M. had been in his current foster family placement for nearly a year and was thriving. His foster parents had a complete understanding of the responsibilities of adoption and had demonstrated a consistent ability to fully meet D.M.'s needs.

Mother and father contested this recommendation. The juvenile court ordered them to file offers of proof for a section 366.26 hearing to be held on January 31, 2019. Only mother complied. Father "did not feel there was sufficient evidence to be able to file an offer of proof."

Mother's offer of proof set forth her intent to introduce evidence supporting application of the beneficial parent-child relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) Mother stated that she had visited D.M. consistently and that the visits went well. She further noted that D.M. had lived with her during the first year of his life and that she had successfully engaged in extensive services to repair and alleviate the reasons D.M. had been removed. Mother was attending college to become a drug and alcohol counselor, was maintaining her sobriety and was committed to keeping D.M. safe.

The juvenile court found mother's offer of proof insufficient and denied her request for a contested section 366.26 hearing. It adopted CWS's recommendation to terminate mother's and father's parental rights and ordered adoption as the permanent plan.

DISCUSSION

Mother argues the juvenile court abused its discretion by denying her request for a contested evidentiary hearing to establish the beneficial parent-child relationship exception to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i); see *In re A.B.* (2014) 230 Cal.App.4th 1420, 1434 [denial of contested hearing based on an offer of proof is reviewed for abuse of discretion].) Father joins in this argument.

Under section 366.26, subdivision (c)(1)(B)(i), if reunification services have been terminated and the child is adoptable, the juvenile court must terminate parental rights unless it “finds a compelling reason for determining that termination would be detrimental to the child” due to a statutory exception. The beneficial parent-child relationship exception requires the parent to show (1) “regular visitation and contact” and (2) “benefit” to the child from “continuing the relationship.” (*Ibid.*; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A parent who has not reunified with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*In re Angel B.*, at p. 466.) The parent bears the burden establishing “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The juvenile court may request an offer of proof regarding exceptions to the termination of parental rights. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) Due process does not require a court to hold a contested hearing if the parent does not proffer

“relevant evidence of significant probative value” to the issue he or she seeks to contest at the hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

Mother’s offer of proof addressed both prongs of the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) To show regular visitation and contact, mother noted that she lived with D.M. during the first year of his life and that she attended all the visits that were offered after his detention. Mother was only allowed monthly two-hour visits, but the juvenile court found that “even though it is not a lot of contact,” it was sufficient given that she was not afforded additional visits.

To satisfy the second prong, mother had to show her relationship with D.M., who is adoptable, promotes his well-being to such a degree as to outweigh the well-being he would gain through adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Stated differently, mother had “to prove that ‘severing the natural parent-child relationship would deprive [D.M.] of a *substantial*, positive emotional attachment such that [he] would be *greatly* harmed. [Citations.]” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) The juvenile court found that none of the evidence mother proposed to introduce at the contested hearing could overcome this hurdle.

Mother has not demonstrated that the juvenile court abused its discretion. Mother’s offer of proof focused primarily on her progress in treatment and her sobriety. These efforts, although commendable, were intended to “alleviate the reason [D.M.] was removed” from the family home. They do not show that mother played a significant parental role in D.M.’s life (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826-827), or that their bond was so great that the maintenance of the relationship was more

important than the child's ability to attain permanency through adoption by a family that he loved and that loved him. Mother did offer to testify regarding "her progress and her commitment to keeping [D.M.] safe and her number one priority" and to show that "she has a stable home for [D.M.], continues in her recover[y], and can financially provide for him." But this evidence simply states mother's plans if reunited with D.M. It has no bearing on the level of their attachment or whether D.M. would be greatly harmed by the severing of their relationship. (See *In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.) The court reasonably found mother's offer of proof was insufficient to warrant a contested section 366.26 hearing.

DISPOSITION

The order terminating mother's and father's parental rights and selecting adoption as the permanent plan is affirmed. Mother's appeal from the order denying her section 388 petition is dismissed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant C.G.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant J.M.

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